

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MARY KAY INC.,)	
)	
Plaintiff,)	
)	
v.)	
)	
JENNIFER BICKEL COOK,)	
)	
Defendant.)	Civil Action No. 3:21-CV-2543-C

ORDER

The Court, having considered Defendant's Motion to Dismiss and Plaintiff's Response, is of the opinion that the same should be **DENIED** for essentially the reasons argued in Plaintiff's Response.¹ More specifically, the Court finds that Plaintiff has met its pleading burden at this stage of the litigation in relation to its copyright infringement claim to survive Defendant's Motion to Dismiss. As argued by Plaintiff, Defendant's fair use defense contains mixed questions of law and fact. *See Harper & Row Publishers, Inc. v. Nation Enterprises*, 471 U.S. 539, 560 (1985). Unsurprisingly, the Parties have two very different interpretations and statements of the facts at this stage of the litigation. Similarly, Plaintiff's Lanham Act claim relies on allegations of false endorsement/false association and the Parties' pleadings differ as to the basis of any false use/misuse or implied endorsement in sale of Defendant's book. As to whether the non-disclosure agreement signed by Defendant constitutes a basis for Plaintiff to

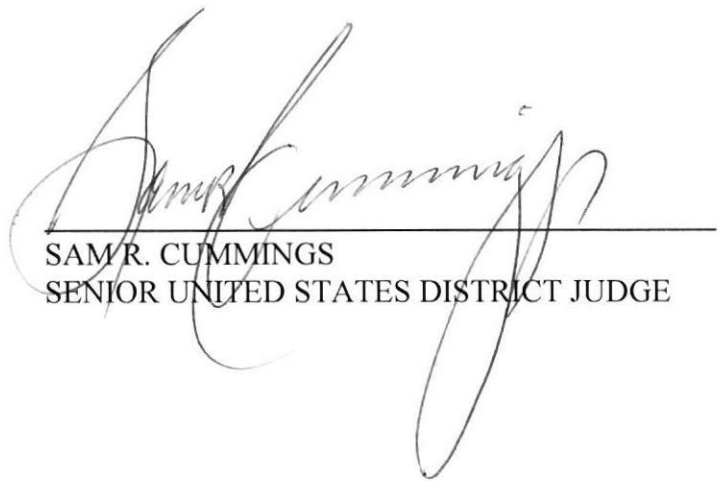
¹Although Defendant attempted to file a reply, it was not considered by the Court because Defendant failed to seek leave to file said reply. The Court requires that a party request leave of Court to file a Reply. *See* Judge Specific Requirements for Senior United States District Judge Sam R. Cummings II.B "The Court will entertain only motions and responses but no replies unless otherwise ordered." (available at www.txnd.uscourts.gov/judge/senior-district-judge-sam-cummings).

bring a breach of contract claim as a matter of law, the Court is unable make such a determine at this stage of the litigation merely from the pleadings. Finally, Plaintiff's state law tort claims will require the development of facts and evidence during the discovery process to determine whether they survive; however, the Court cannot make that determination at this juncture.

As such, Defendant's Motion to Dismiss is **DENIED**.

SO ORDERED.

Dated December 5, 2022.



SAM R. CUMMINGS
SENIOR UNITED STATES DISTRICT JUDGE